

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

WENDY TIPPITT, individually and as
the administrator of the Estate of
Timothy Michael Randall,

Plaintiff,

v.

SERGEANT SHANE IVERSON, et al.,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Wendy Tippitt, individually and as administrator of the estate of Timothy Michael Randall, filed this civil action against Defendants Shane Iverson, Unknown Officer, and Rusk County. The case was referred to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Before the Court is Defendant Rusk County's motion to dismiss for insufficient service of process and failure to state a claim. Docket No. 4. Defendant Rusk County has withdrawn its motion on the basis of insufficient service based on subsequent service. Docket No. 9 at 1. On February 2, 2024, Judge Love issued a Report recommending that the Court grant Rusk County's motion to dismiss for failure to state a claim but allow Plaintiff leave to amend her complaint to cure the deficiencies discussed in the report. Docket No. 16. No objections to the report have been filed.


This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, Plaintiff did not object in the prescribed period. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).

Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, it is hereby **ORDERED** that the Magistrate Judge’s Report (Docket No. 16) is **ADOPTED**. Defendant Rusk County’s motion to dismiss (Docket No. 4) is **GRANTED**. Further, Plaintiff is **GRANTED** leave to file an amended complaint addressing the deficiencies discussed in the Magistrate Judge’s Report and consistent with Federal Rule of Civil Procedure 8 by March 12, 2024. To the extent

Plaintiff chooses to file an amended complaint, Defendants shall file a timely response in accordance with the Federal Rules of Civil Procedure.

So **ORDERED** and **SIGNED** this **27th** day of **February, 2024**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE